

## ***INSTRUCTIONS TO APPLICANTS APPEALING TO THE ZONING BOARD OF ADJUSTMENT***

**IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING  
OUT ATTACHED APPLICATION**

The board strongly recommends that, before making any appeal, you become familiar with the zoning ordinance, and also with New Hampshire Statutes TITLE LXIV, RSA Chapters 672-677, covering planning and zoning.

**Four (4) types of appeals** can be made to the zoning board of adjustment.

**APPEAL FROM AN ADMINISTRATIVE DECISION:** If you have been denied a building permit or are affected by some other decision regarding the administration of the zoning ordinance, and you believe that **the decision was made in error** under the provisions of the ordinance, you may appeal the decision to the board of adjustment. The appeal will be granted if you can show that the decision was indeed made in error. If you are **appealing an administrative decision**, a copy of the decision appealed from must be attached to your application.

**SPECIAL EXCEPTION:** Certain sections of the zoning ordinance provide that a particular use of property in a particular zone, will be permitted **by special exception** if specified conditions are met. The necessary conditions for each special exception are given in the ordinance. Your appeal for a special exception will be granted if you can show that the conditions stated in the ordinance are met. If you are applying for a **special exception**, you may also need site plan or subdivision approval, or both, from the planning board. Presenting a site plan to the planning board will assist in relating the proposal to the overall zoning. Again, this should be done **before** you apply for a special exception.

**VARIANCE:** A **variance** is an authorization, which may be granted under special circumstances, to use your property in a way that is not permitted under the strict terms of the zoning ordinance. For a variance to be legally granted, **you must show** that your proposed use meets **all five (5)** of the following conditions:

1. The proposed use would not diminish surrounding property values.
2. Granting the variance must be contrary to the public interest.
3. Denial of the variance would result in unnecessary hardship to the owner. **Hardship**, as the term applies to zoning, results if a restriction, when applied to a particular property becomes arbitrary, confiscatory, or unduly oppressive **because of conditions of the property that distinguish it from other properties** under similar zoning restrictions. Hardship, under zoning law, has nothing to do with the physical or economic condition of the owner. The NH Supreme Court has established a new test for unnecessary hardship consisting of three (3) elements:

**For a “USE” variance answer a-c:**

[a] As applied to the petitioner’s property will interfere with the petitioner’s reasonable use of their property, considering the unique setting of the property in its environment for the following reasons:

[b] As specifically applied to the petitioner’s property the ordinance has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons:

[c] If relieved by a variance, will not injure the public or private rights of others for the following reasons:

**For an “Area” variance answer aa-bb:**

[aa] An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because:

[bb] The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because:

4. Granting the variance would do substantial justice.
5. The proposed use is not contrary to the spirit of the ordinance.

If you are applying for a **variance**, you must first demonstrate a form of determination that your proposed use is not permitted without a variance. Most often, this determination is a denial of a building permit, or a copy or reference to the zoning ordinance. A copy of the determination must be attached to your application.

**: EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:** The board may grant an equitable waiver only for existing dimensional nonconformity’s provided the applicant can meet the required standards.

- a.) The nonconformity was not discovered until after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser;
- b.) The nonconformity was not an outcome of ignorance of the law or bad faith but was instead caused by a legitimate mistake;

If these conditions are satisfied, the board can move on to the additional findings to grant the waiver:

- c.) The nonconformity does not constitute a public or private nuisance nor diminish the value or interfere with future uses of other property in the area; and
- d.) The cost of correction would far outweigh any public benefit to be gained.

In lieu of the requirements in paragraphs (a) and (b), the violation has existed for 10 years or more with no enforcement action, including written notice, commenced by the Town.

For all appeals, the application form must be properly & completely filled out. **Only approved original forms will be accepted. Any application or portion thereof that is not on an approved application form SHALL NOT be accepted by the Land Use Coordinator and the appeal SHALL not be presented to the Zoning Board of Adjustment for hearing.** All Appeal Application forms are available from the Land Use Coordinator and via the town web-site [www.town.weare.nh.us](http://www.town.weare.nh.us) . By down loading the necessary documents from the web-site and saving them to your computer you may then input the information directly to the form and then print the application for delivery to the Land Use Coordinator for Administrative Review. The application form is intended to be self-explanatory, but be sure that you show:

**WHO** owns the property (a copy of deed to be attached)? If the applicant is not the owner, a written authorization required.

**WHERE** is the property located?

**DESCRIBE** the property. Give area, frontage, side and rear lines, slopes and natural features, etc.

**WHAT** do you propose to do? Attach plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of your applications concerning the property.

**WHY** does your proposed use require and appeal to the board of adjustment?

**WHY** should the appeal be granted?

Prepare a list of all abutting property owners, have it verified at the Town Office, and attach it to your application. If you have any difficulty, consult the assessor's office, but the accuracy of the list is **your** responsibility.

Mail or deliver the completed application with all attachments (along with seven copies of all documentation) to the Land Use Department. A fee of \$50.00 for the hearing plus and additional \$5.00 per abutter is charged to cover the cost of preparing and mailing the legally-required notices. Make checks payable to "Town of Weare" and remit with your application.

The board will schedule a **public hearing within 30 days of receipt of your properly-completed application**. Public notice of the hearing will be posted and printed in a newspaper, and notice will be mailed to you and to all abutters and to other parties whom the board may deem to have an interest, at least five (5) days before the date of the hearing. You and all other parties are invited to appear in person or by agent of counsel to state reasons why the appeal should or should not be granted.

After the public hearing, the board will reach a decision. You will be sent a **notice of decision** within 72 hours of the decision. Minutes from the meeting are available within 144 hours (6 days) after the meeting.

If you believe the board's decision is wrong, you have the right to appeal. The selectmen, or any party affected, have similar rights to appeal the decision in your case. To appeal, you must first ask the board for a rehearing within thirty (30) days. The **motion for rehearing** shall be made upon the appropriate form for appeal of "ZBA

HEARING DECISION”. The motion **must be made within 20 days after the decision is filed and first becomes available for public inspection to the board’s office**, and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The board may grant such a rehearing if, in its opinion, good reason is stated in the motion. The board will not reopen a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. Whether or not a rehearing is held, **you must have requested one before you can appeal to the courts**. When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters.

See RSA Chapter 677 for more detail on rehearing and appeal procedures.

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